

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 February 2025

DOCKET NUMBER: AR20240007671

APPLICANT REQUESTS:

- remission or cancellation of indebtedness owed to the Government and the return of overpayments
- personal appearance before the Board or via video or telephonically

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record).

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he requests the remission or cancellation of indebtedness owed to the Government and the return of monies for any overpayments and the personal appearance before the Board via video or telephonically. On or about November 2022, the debt to the Government was paid in full by all the defendants in the case. In 2023, the Internal Revenue Service sent the Defense Finance and Accounting Service (DFAS) money on his debt which paid his portion of the case in full, with an overpayment of funds. In accordance with the Department of Justice and records from the judgement all the persons involved in the case were to pay equal portions of the fine(s).
3. A review of the applicant's service record shows:
 - a. With prior enlisted U. S. Marine Corps service, the applicant enlisted in the Army National Guard (ARNG) on 15 March 2007 for a 1-year enlistment.
 - b. The applicant's service record is void of extension or reenlistment during this period.

c. On 18 November 2008, Orders Number 323-1013, issued by the Texas (TX) Military Forces ARNG Adjutant General's Office, the applicant was ordered to full time National Guard duty in an Active Guard Reserve (AGR) status effective 1 December 2008.

d. On 18 October 2011, the applicant reenlisted or extended his service in the ARNG by 3-years, 8-months and 16-days for a new expiration of term of service of 30 November 2017.

e. On 19 October 2011, Orders Number 292-1042, issued by the TX Military Forces ARNG Adjutant General's Office, the applicant was ordered to full time National Guard duty in an AGR status effective 1 December 2011.

f. On 4 October 2013, the applicant was honorably discharged from the ARNG. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 5-years and 24-days of active service.

g. On 14 January 2015, Orders Number 014-119, issued by the TX Military Forces ARNG, the applicant was honorably discharged from the ARNG and assigned to the U. S. Army Reserve (USAR) Control Group (Individual Ready Reserve) effective 3 March 2014.

h. On 5 December 2017, Orders Number D-12-730528, issued by the U. S. Army Human Resources Command, the applicant was honorably discharged from the USAR effective 5 December 2017.

4. On 31 January 2025, in the processing of this case, DFAS responded to an inquiry regarding the applicant's indebtedness. The advisory official stated the applicant had a remaining debt balance in the amount of \$14,857.40 which was sent to the Department of Treasury for collection, and he may owe additional interest, penalties and fees. His original debt was for the loss or damage of Government property in the amount of \$37,787.60. There was a collection of funds in the amount of \$23,049.59 plus charges in the amount of \$179.96 and write offs in the amount of \$14,917.97 and a payment in the amount of \$217.72.

On 12 September 2018, DFAS notified the applicant of his indebtedness in the amount of \$32,522.52 and provided instruction for payments or appeals.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's service record and the DFAS advisory opinion dated 31 January 2025, the Board noted that the original debt of \$37,787.60 was related to the loss or damage of Government property. DFAS records show collections totaling \$23,049.59, additional charges of \$179.96, write-offs of \$14,917.97, and a payment of \$217.72. Despite the applicant's assertions, the Board found no supporting documentation confirming that the debt was fully satisfied or that an overpayment occurred.

2. The Board acknowledged the applicant's contentions that the debt was paid in full by all defendants involved in a legal case as of November 2022, and that the Internal Revenue Service (IRS) subsequently submitted funds to the Defense Finance and Accounting Service (DFAS) in 2023, resulting in an overpayment of his portion. However, DFAS indicated that a remaining balance of \$14,857.40 had been referred to the Department of Treasury for collection, and additional interest, penalties, and fees may apply. Based on the preponderance of evidence, the Board determined that the applicant did not demonstrate an error or injustice that would warrant relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

X //SIGNED//

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation (AR) 600-4 (Remission or Cancellation of Indebtedness) provides policy and instructions for submitting and processing packets for remission or cancellation of indebtedness to the U.S. Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. A Soldier's debt to the U.S. Army may be remitted or canceled on the basis of this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.
3. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
4. AR 735-5 (Property Accountability Policies) in effect at the time, contains concepts and guidelines for establishing and maintaining the Command Supply Discipline Program (CSDP).

a. Paragraph 13-3, mandatory initiation of a financial liability investigation of property loss a. Initiate and process a financial liability investigation of property loss to account for lost, damaged, or destroyed Government property when negligence or willful misconduct is suspected as the cause, and the individual does not admit liability and refuses to make voluntary reimbursement to the Government for the full value of the loss less depreciation.

b. Paragraph 13-5, chain of command for processing financial liability investigations of property loss, process a DD Form 200 through the chain of command for the individual responsible for the property at the time of the incident if the individual is subject to this regulation.

c. Paragraph 13-6 (Time constraints for processing financial liability investigations of property loss), initiate and process DD Form 200 within a specific number of days, following the discovery of the loss or damage of Government property, as prescribed in paragraph 13-8. When delayed beyond the below listed processing times, the person responsible for the delay will prepare a written statement explaining the reason for the delay and attach it to the DD Form 200 as an exhibit. Total processing time equals the difference in days between the date of discovering the discrepancy and the date the DD Form 200 is approved. The time used to notify the individual of the financial liability officer's recommendation and the approving authority's decision to hold the respondent financially liable per paragraph 13-34 and paragraph 13-42 is not included. Subtract one date from the other, less the time used to notify the individual, to determine the total processing time. Subparagraph b. U.S. Army Reserve and/or Army National Guard. Under normal circumstances, do not exceed 240 calendar days total processing time.

d. Paragraph 13-8 (Time constraints for initiation of financial liability investigations of property loss), Initiate financial liability investigations of property loss within the following time limits: b. (U.S. Army Reserve and Army National Guard), the USAR will initiate and present financial liability investigations of property loss to the appointing authority or approving authority as appropriate not later than 75 calendar days after the date of discovering the discrepancy. The ARNG will initiate and present financial liability investigations of property loss to the appointing authority or approving authority as appropriate not later than 75 calendar days after the date of discovering the discrepancy. All ARNG investigations will then be forwarded to the State USPFO who will serve as the final review authority.

e. Paragraph 13-42 (Respondent's Rights), a. Members of the Army, employees, and members of other Services having a reciprocal agreement with the Army may have approved charges of financial liability involuntarily withheld from their Federal pay. This also applies to former members of the Army. Before individuals are held financially liable, they must receive notice and the opportunity to exercise their rights.

The memorandum with a copy of the DD Form 200 with all exhibits will be hand delivered to the person found financially liable. If the individual is not available locally, the memorandum will be forwarded by certified mail, return receipt requested. The memorandum will inform the individual that collection efforts will begin 30 calendar days (ARNG 60 calendar days) from the date delivered or mailed. The individual has the right to:

- inspect and copy Army records relating to the debt
- obtain free legal advice relating to the assessment of financial liability
- request reconsideration of the assessment of financial liability based on legal error
- request remission or cancellation of the indebtedness (enlisted personnel only)
- request extension of the collection period
- submit an applicant to the Army Board of Correction of Military Records to request reconsideration, a hearing, or remission or cancellation of indebtedness when they believe the findings were unjust

f. Paragraph 13-50 (Actions resulting from reopening a financial liability investigation of property loss), d. Repayment of amounts previously collected. Property listed on a DD Form 200 may be recovered after assessment of financial liability is approved, or the assessment may have been reversed by the approving or appeal authority. If so, an amendment will be prepared, citing the specific alterations, and attached to the DD Form 200 as an exhibit. A copy of the amendment will be attached to a memorandum directing repayment of the value of the recovered property to the individual, as a "collection erroneously received."

g. Paragraph 14-27 (Personal clothing and organizational clothing and individual equipment), a. The commanders of Active Army, USAR, and ARNG members, and ROTC cadets are responsible for initiating financial liability investigations of property loss when property issued from a CIF becomes lost, damaged, or destroyed, and none of the methods cited in chapter 12 can be used to obtain relief from responsibility. Additionally, the commanders of USAR and ARNG members and ROTC cadets are responsible for initiating financial liability investigations of property loss when property issued from a clothing initial issue point becomes lost, damaged, or destroyed. b. The following applies to the loss of personal clothing and OCIE when a USAR member, ARNG member, or ROTC cadet stops participating in training sessions (unsatisfactory participant whose whereabouts is unknown) and has not returned their personal clothing and/or OCIE. If the FAO or USPFO cannot make collections because no pay is due, the DD Form 200 will be forwarded to the servicing claims office for collection.

//NOTHING FOLLOWS//